

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 GENE CAMARATA,
11 Plaintiff/Counter Defendant,
12 v.
13 MCDONALD'S CORPORATION,
14 Defendant/Counter Claimant.

CASE NO. C19-6236JLR

ORDER GRANTING
MCDONALD'S
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 Before the court is Defendant and Counter Claimant McDonald's Corporation's
17 ("McDonald's") motion for summary judgment. (MSJ (Dkt. # 41).) Despite receiving an
18 extension to respond to the motion (3/2/21 Order (Dkt. # 45)), *pro se* Plaintiff and
19 Counter Defendant Gene Camarata has not filed any opposition (*see* Dkt.). The court has
20 reviewed the motion, the submissions filed in support of the motion, the relevant portions

21 //

22 //

1 of the record, and the applicable law. Being fully advised,¹ the court GRANTS the
 2 motion.

3 II. BACKGROUND

4 This case centers on four domain names registered by Mr. Camarata that have
 5 been ordered to be transferred to McDonald's in two administrative domain name
 6 proceedings. (*See* Compl. (Dkt. # 1-2).) The court reviews first the factual background
 7 and then the procedural background.

8 A. Factual Background

9 McDonald's is "one of the world's largest restaurant chains" that is "in the
 10 business of developing, operating, and franchising an extensive system of restaurants
 11 under the McDonald's brand name that prepare, package, and sell a variety of
 12 high-quality, quickly-prepared, [and] modestly-priced foods and beverages." (Fuelleman
 13 Decl. (Dkt. # 42) ¶ 41, Ex. 33 ("Hill Decl.") ¶¶ 4-5.) As "the world's leading foodservice
 14 retailer," McDonald's owns numerous trademarks and other intellectual property,
 15 including the "McDONALD'S mark, its family of Mc-informative marks, and the mark
 16 of McD." (Hill Decl. ¶¶ 6-8, Ex. 2 ("McD Trademark").)

17 McDonald's makes use of the McD mark for products used in its stores, its mobile
 18 application, and various domain names. (*E.g.*, *id.* ¶ 9, Ex. 3 (using McD mark in hand
 19 soap brand), ¶ 10, Ex. 4 (using McD mark in mobile application "atmcd" or "@mcd"),
 20 ¶ 11, Ex. 5 (using McD mark in domain names atmcd.com, accessmcd.com and

21
 22 ¹ McDonald's does not request oral argument (*see* MSJ at 1), and the court finds that oral argument would not be helpful here, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 mcd.com), ¶ 12, Ex. 6 (using McD mark in its stock ticket symbol).) Specifically, in
 2 1993, McDonald's registered the domain name "mcd.com" and began assigning its
 3 employees and executives email addresses that end in "@mcd.com." (*Id.* ¶ 15.) Since
 4 then, McDonald's has utilized more specific email address endings to reflect its
 5 organizational structure, including the ending "@us.mcd.com" to denote United States
 6 employees; "@us.stores.mcd.com" to denote United States restaurant personnel; and
 7 "@partners.mcd.com" to denote franchisee-owned restaurant personnel. (*Id.*)

8 Mr. Camarata registered the domain name "mcd.us.com" on June 20, 2019.
 9 (Fuelleman Decl. ¶ 5, Ex. 4; *id.* ¶ 8, Ex. 7 at 5.) He then registered the domain names
 10 "partnersmcd.com," "storesmcd.com" and "usstoresmcd.com" in July of 2019. (*Id.* ¶ 3,
 11 Ex. 2.) In registering "mcd.us.com," "partnersmcd.com," "storesmcd.com," and
 12 "usstoresmcd.com" (collectively, "Disputed Domain Names"), Mr. Camarata used
 13 fictitious names "Eburg City" and "Hello There," as well as a fake address "100 Hello
 14 St., Ellensburg, WA." (*Id.* ¶ 35, Ex. 27 (fictitious names), ¶ 36, Ex. 28 (fictitious
 15 address).) Because the Disputed Domain Names look like McDonald's assigned domain
 16 names, many people intending to e-mail McDonald's have wound up emailing Mr.
 17 Camarata instead. (Hill Decl. ¶¶ 16-17.) For instance, if an individual wishing to email
 18 McDonald's at "us.mcd.com" inadvertently transposes the "us" and "mcd," it results in
 19 an email to Mr. Camarata at "mcd.us.com." (*Id.* ¶ 16.) Similarly, those wishing to email
 20 McDonald's franchisees at "partners.mcd.com" may mistakenly omit the period between
 21 terms, resulting in an email to Mr. Camarata at "partnersmcd.com." (*Id.* ¶ 17.)

22 //

1 In August 2019, McDonald's first became aware of Mr. Camarata's use of the
2 Disputed Domain Names when Mr. Camarata forwarded some messages sent in error to
3 McDonald's. (Fuelleman Decl. ¶ 7, Ex. 6 ("8/12/19 Email").) Mr. Camarata explained
4 in his email that he had "been registering a lot of domain names with catch-all email
5 accounts" that "allows one to receive e-mails sent to the domain that might be
6 misaddressed or misspelled." (*Id.* at 1.) As a result, he has received "hundreds—perhaps
7 weekly—of misdirected emails" containing "important, private and confidential
8 information." (*Id.* at 1-2.) He then attached two screenshots of erroneous emails sent to
9 "partnersmcd.com." (*Id.* at 2.)

10 Since then, Mr. Camarata has continued to email McDonald's on a frequent basis,
11 forwarding misdirected emails and demanding compensation. (*See* Fuelleman Decl.
12 ¶¶ 8-10, Exs. 7-9 (collecting Mr. Camarata's emails).) Qualifying his forwarding service
13 as "invaluable," Mr. Camarata complains to McDonald's about the "time, expenses, labor
14 and effort" that he has expended "for quite some time," opining that he should "start
15 sending invoices for bills at \$500.00 per hour." (*Id.* ¶ 8, Ex. 7 at 5; ¶ 10, Ex. 9 at 10; *see*
16 *also id.* at 30 (lamenting that he has "been working for nothing and at [his] own time and
17 expense"); *id.* at 35 ("A problem is that everyone else is getting paid . . . while I get very
18 little or nothing . . . while I do all the work.")) In one message, he notes that he "[c]an't
19 sort it out without funding" and asks to be "put . . . on the payroll . . . with a very high
20 salary." (*Id.* ¶ 10, Ex. 9 at 24; *see also id.* ¶ 9, Ex. 8 at 1 ("Please start providing
21 substantial monetary compensation.")) In another, he asks McDonald's Vice President
22 of Global Marketing for "\$250.00 for [his] services . . . Just ask how to contribute!" (*Id.*

1 at 32.) At times, he threatens to “deactivate the catch-all so the emails bounce back”
 2 unless McDonald’s provides “a couple of thousand dollars, to buy a laptop and other
 3 expenses, in order to facilitate working on a possible resolution.” (*Id.* at 19.)

4 Additionally, Mr. Camarata threatens legal action against McDonald’s for
 5 exposing the private information within the misdirected emails. (*Id.* ¶ 8, Ex. 7 at 5
 6 (threatening to file lawsuits or complaints with agencies); ¶ 10, Ex. 9 at 20 (asking for
 7 CEO’s contact information to depose him); *id.* at 6 (noting possibility of appeal to Ninth
 8 Circuit and Supreme Court).) At other times, Mr. Camarata states that he will go to the
 9 media, once opining that he would start his own media company if “major news outlets
 10 are not reporting with clarity and [are] wishy-washy.” (*Id.* ¶ 8, Ex. 7 at 1 (threatening to
 11 go to the “Wall Street Journal and New York Times”); *id.* ¶ 10, Ex. 9 at 37.)

12 On August 30, 2019, McDonald’s filed a complaint with the World Intellectual
 13 Property Organization (“WIPO”) pursuant to the Uniform Domain Name Dispute
 14 Resolution Policy (“UDRP”), which sets out the process for contesting domain name
 15 registrations through private arbitrators. (Fuelleman Decl. ¶ 20, Ex. 14(a).) McDonald’s
 16 UDRP complaint objected to Mr. Camarata’s use and registration of “partnersmcd.com,”
 17 “storesmcd.com,” and “usstoresmcd.com.”² (*Id.* ¶ 20, Ex. 14(b).) While the complaint
 18 was pending, Mr. Camarata registered another domain name, “mcd.ceo,” which he named
 19 //

20 ² McDonald’s filed two UDRP complaints, the first of which challenged Mr. Camarata’s
 21 use of all Disputed Domain Names. (*Id.* ¶ 20, Ex. 14(a).) Mr. Camarata’s counsel objected that
 22 the WIPO lacked jurisdiction over any “third level domain names,” such as those ending in
 “us.com.” (*Id.* ¶ 19, Ex. 15 at 2.) Thus, McDonald’s refiled a UDRP complaint that only
 challenged the three domain names ending in “.com.” (*Id.* ¶ 20, Ex. 14(b).)

1 “Problems at McDonald’s” and purported to feature grievances about McDonald’s. (*Id.*
 2 ¶¶ 21-22, Exs. 16-17, ¶ 24, Ex. 19 (“UDRP Decision”) at 5.) Mr. Camarata then
 3 contended that he registered the Disputed Domain Names to create a “gripe website” and
 4 complain about McDonald’s. (UDRP Decision at 5-6.)

5 The UDRP administrative panel found for McDonald’s. (*Id.* at 7.) First, it found
 6 that McDonald’s established its rights in the McD mark and that the three domain names
 7 are identical or confusingly similar to the McD mark, as “each of the disputed domain
 8 names fully incorporate MCD.” (*Id.* at 5.) It then found that Mr. Camarata had no rights
 9 or legitimate interests in those domain names and that the alleged “gripe” website set up
 10 at “mcd.ceo” “is not only pretextual but likely a *post hoc* justification.” (*Id.* at 5-6.)
 11 Finally, the panel concluded that Mr. Camarata registered the domain names “to profit in
 12 bad faith from their connection to [McDonald’s] email address endings.” (*Id.* at 6-7.)
 13 The panel ordered that all three domain names be transferred to McDonald’s. (*Id.* at 7.)

14 McDonald’s also challenged Mr. Camarata’s use of “mcd.us.com” under the
 15 CentralNIC Domain Name Resolution Policy (“CDRP”), which governs disputes over
 16 third-level domain names under “us.com.” (Fuelleman Decl. ¶¶ 26-27, Exs. 21-22.) The
 17 parties participated in mandatory mediation but were unable to reach resolution. (*Id.*
 18 ¶ 25, Ex. 20 at 1.) Accordingly, on October 15, 2019, McDonald’s filed a complaint with
 19 the National Arbitration Forum against “mcd.us.com.” (*Id.* ¶ 26, Ex. 21.) The CDRP
 20 panel reached the same conclusions as the UDRP panel, finding that “the domain name
 21 was registered by [Mr. Camarata] in order to target [McDonald’s] and create confusion
 22 with e-mail addresses used by [McDonald’s] in its day-to-day business, and to do so for

[Mr. Camarata's] personal gain." (*Id.* ¶ 28, Ex. 23 ("CDRP Decision") at 5-7.) It too ordered the transfer of "mcd.us.com" to McDonald's. (*Id.* at 7-8.)

3 | B. Procedural Background

4 Mr. Camarata filed the instant suit in state court under the Anticybersquatting
5 Consumer Protection Act (“ACPA”), 15 U.S.C. § 1125(d), to effectively appeal the
6 UDRP and CDRP panel decisions, as neither the UDRP nor the CDRP provides an
7 internal appeal process and instead directs the losing party to file a declaratory judgment
8 action to review panel decisions. (*See* Compl. ¶ 16.)³ McDonald’s removed this case to
9 federal court on December 24, 2019. (*See* Not. of Removal (Dkt. #1).) Additionally,
10 McDonald’s counterclaimed that Mr. Camarata violated the ACPA and sought immediate
11 implementation of the ordered transfers. (Ans. (Dkt. # 2) ¶¶ 30-44.)

12 Mr. Camarata’s attorney moved to withdraw, which was granted on May 27, 2020,
13 and Mr. Camarata has proceeded *pro se* since then. (*See* Mot. to Withdraw (Dkt. # 34);
14 5/27/20 Order (Dkt. # 35).) McDonald’s filed the instant motion for summary judgment
15 on February 11, 2021. (*See* MSJ.) On March 1, 2021—the day that his response was
16 due—Mr. Camarata moved for an extension of time to respond, citing COVID-19 as a
17 barrier to accessing an “adequate computer at public libraries” and conducting “legal
18 research at law libraries.” (*See* Mot. for Extension (Dkt. # 44).) The court granted him
19 until March 12, 2021, to oppose McDonald’s motion. (3/2/21 Order at 2.)

20 //

³ This suit initially involved only the “mcd.us.com” domain name. (See Compl.) However, it was consolidated with another case involving the other three Disputed Domain Names. (3/23/20 Order (Dkt. # 31) at 2.)

1 Despite Mr. Camarata’s purported difficulty accessing computers, he registered an
2 additional domain name, “globalmcdonalds.com,” on or around March 8, 2021. (2d
3 Fuelleman Decl. (Dkt. # 47) ¶ 6, Ex. 4.) Moreover, he has continued to email
4 McDonald’s “nearly every day since February 11, 2021,” including a few that were sent
5 around March 1, 2021. (*Id.* ¶ 3, Ex. 2 (collecting Mr. Camarata’s 18 emails sent to
6 McDonald’s since its summary judgment motion).) After the court’s grant of the
7 extension, Mr. Camarata notified McDonald’s counsel that he was “not going to respond”
8 to the motion and that he “will be immediately filing a notice with the 9th [C]ircuit[,]”
9 whether it’s premature or not.” (*Id.* ¶ 4, Ex. 3 (transcript of voicemail from Mr.
10 Camarata).) True to his word, Mr. Camarata has not filed any opposition to McDonald’s
11 motion. (*See* Dkt.)

III. ANALYSIS

13 Although McDonald’s motion for summary judgment is unopposed, a party’s
14 failure to respond to a motion for summary judgment does not permit the court to grant
15 the motion automatically. *See Heinemann v. Satterberg*, 731 F.3d 914, 916 (9th Cir.
16 2016) (“[A] motion for summary judgment may not be granted based on a failure to file
17 an opposition to the motion.”). Rather, the court may only “grant summary judgment if
18 the motion and supporting materials—including the facts considered undisputed—show
19 that the movant is entitled to it.” Fed. R. Civ. P. 56(e)(3); *see Heinemann*, 731 F.3d at
20 916. Where facts asserted by the moving party in an unopposed motion are concerned,
21 the court may “consider the fact undisputed for purposes of the motion.” *Id.* The
22 existence of a scintilla of evidence in support of the non-moving party’s position is

1 insufficient to allow the non-movant to survive summary judgment. *Anderson v. Liberty*
 2 *Lobby*, 477 U.S. 242, 252 (1986). Rather, “there must be evidence on which the jury
 3 could reasonably find for the [non-moving party].” *Id.*

4 McDonald’s moves for summary judgment on its ACPA counterclaim, which
 5 would necessarily defeat Mr. Camarata’s claim for a declaration of non-infringement.
 6 (*See* MSJ at 12-13); 15 U.S.C. § 1114(2)(D)(v) (requiring plaintiff to demonstrate his
 7 registration of domain name is not unlawful to prevail on claim). McDonald’s must
 8 establish that (1) it owns a valid and distinctive mark; (2) Mr. Camarata’s use of the
 9 Disputed Domain Names are identical to or confusingly similar to McDonald’s mark; and
 10 (3) Mr. Camarata has a bad faith intent to profit from the Disputed Domain Names. *See*
 11 *Lahoti v. VeriCheck, Inc.*, 586 F.3d 1190, 1196-97 (9th Cir. 2009). The court addresses
 12 each element in turn.

13 **A. Ownership of Valid and Distinctive Mark**

14 The undisputed evidence establishes that McDonald’s owns the distinctive McD
 15 mark. Any federal trademark registration “shall be prima facie evidence of the validity of
 16 the registered mark . . . [and] of the registrant’s ownership of the mark.” 15 U.S.C.
 17 § 1115(a). A mark is “plainly distinctive” when “the letters do not form a word in the
 18 dictionary and there is no apparent logical connection to the goods, such as Exxon gas or
 19 Xerox copiers.” *Lahoti*, 586 F.3d at 1197; *see also id.* at 1199 (“Registration alone may
 20 be sufficient in an appropriate case to satisfy a determination of distinctiveness.”). Here,
 21 McDonald’s submits its federal trademark registration for the McD mark, issued years
 22 before Mr. Camarata’s registration of the Disputed Domain Names. (*See* McD

1 Trademark.) Moreover, “McD,” much like “Exxon” or “Xerox,” is not “a word in the
 2 dictionary” and has “no apparent logical connection to [McDonald’s] goods.” *See*
 3 *Lahoti*, 586 F.3d at 1197. The court concludes that there is no genuine issue of material
 4 fact that McDonald’s owns the McD mark and that the mark is distinctive.

5 **B. Identical or Confusingly Similar**

6 It is also undisputed that the Disputed Domain Names are confusingly similar to
 7 the McD mark. The second element of the ACPA requires that the domain names at
 8 issue be identical or confusingly similar to a protected mark. *DSPT Inter., Inc. v. Nahum*,
 9 624 F.3d 1213, 1218-19 (9th Cir. 2010). Domain names may be confusingly similar “if
 10 they incorporate the mark,” “if they add, delete, or rearrange letters in the mark,” or if
 11 they “simply add[s] ‘generic terms . . . [or] a top level domain suffix’ to the plaintiff’s
 12 mark.” *Yelp Inc. v. Catron*, 70 F. Supp. 3d 1082, 1097 (N.D. Cal. 2014). In *Catron*, the
 13 domain name “BuyYelpReview.com” was held to be confusingly similar to the Yelp
 14 mark because it “incorporates the Yelp [m]arks and simply add generic terms (i.e. ‘buy’
 15 and ‘review’) surrounding the Yelp [m]arks.” *Id.*

16 The same is true for the Disputed Domain Names. “mcd.us.com” directly
 17 incorporates the McD mark, as it simply transposes terms in the “us.mcd.com” domain
 18 name owned by McDonald’s. The remaining domain names also incorporate the McD
 19 mark and feature generic terms before it: “partners” in “partnersmcd.com”; “stores” in
 20 “storesmcd.com”; and “US” and “stores” in “usstoresmcd.com.” Indeed, Mr. Camarata
 21 admits that the Disputed Domain Names were created as “catch-all email accounts” to
 22 capture misdirected emails that were intended for McDonald’s, a set-up that is premised

1 on the fact that the domain names are confusingly similar. (*See* 8/12/19 Email at 1-2.)
2 The numerous emails that were, in fact, mistakenly sent to the Disputed Domain Names
3 further support that conclusion. (*See* Fuelleman Decl. ¶¶ 8-10, Exs. 7-9.) Accordingly,
4 there is no genuine issue of material fact that the Disputed Domain Names are
5 confusingly similar to McDonald's mark.

6 **C. Bad Faith Intent to Profit**

7 Lastly, the undisputed evidence establish that Mr. Camarata registered and used
8 the Disputed Domain Names with a bad faith intent to profit from the McD mark. In
9 evaluating bad faith, courts consider the “unique circumstances of each case,” *Lahoti*,
10 586 F.3d at 1202-03, and are guided by the ACPA’s nine non-exclusive factor list:

- 11 (1) the trademark or other intellectual property rights of the person, if any, in
12 the domain name;
- 13 (2) the extent to which the domain name consists of the legal name of the
14 person or a name that is otherwise commonly used to identify that person;
- 15 (3) the person's prior use, if any, of the domain name in connection with the
16 bona fide offering of any goods or services;
- 17 (4) the person's bona fide noncommercial or fair use of the mark in a site
18 accessible under the domain name;
- 19 (5) the person's intent to divert consumers from the mark owner's online
20 location to a site accessible under the domain name that could harm the
21 goodwill represented by the mark, either for commercial gain or with the
22 intent to tarnish or disparage the mark, by creating a likelihood of

1 confusion as to the source, sponsorship, affiliation, or endorsement of the
2 site;

3 (6) the person's offer to transfer, sell, or otherwise assign the domain name
4 to the mark owner or any third party for financial gain without having
5 used, or having an intent to use, the domain name in the bona fide offering
6 of any goods or services, or the person's prior conduct indicating a pattern
7 of such conduct;

8 (7) the person's provision of material and misleading false contact
9 information when applying for the registration of the domain name, the
10 person's intentional failure to maintain accurate contact information, or
11 the person's prior conduct indicating a pattern of such conduct;

12 (8) the person's registration or acquisition of multiple domain names which
13 the person knows are identical or confusingly similar to marks of others
14 that are distinctive at the time of registration of such domain names, or
15 dilutive of famous marks of others that are famous at the time of
16 registration of such domain names, without regard to the goods or
17 services of the parties; and

18 (9) the extent to which the mark incorporated in the person's domain name
19 registration is or is not distinctive and famous within the meaning of
20 subsection (c).

21 15 U.S.C. § 1125(d)(1)(B)(i).

22 //

1 Consideration of these factors in the context of the undisputed evidence evinces
2 that Mr. Camarata acted with a bad-faith intent to profit off of the McD mark. Mr.
3 Camarata has no intellectual property rights in the Disputed Domain Names, nor do the
4 Disputed Domain Names concern Mr. Camarata's name, legal or otherwise. *See* 15
5 U.S.C. § 1125(d)(1)(B)(i)(I)-(II). Moreover, he supplied false names and a false address
6 in registering the Disputed Domain Names. (*See* Fuelleman Decl. ¶ 3, Ex. 2; ¶ 5, Ex. 4;
7 ¶ 35, Ex. 27; ¶ 36, Ex. 28); *see* 15 U.S.C. § 1125(d)(1)(B)(i)(VII). He has registered
8 multiple domain names that are confusingly similar to the McD mark—including some
9 after the commencement of this suit—and his statement that he had “been registering a
10 lot of domain names with catch-all email accounts” specifically to “allow[] one to receive
11 e-mails sent to the domain that might be misaddressed or misspelled” supports that he
12 knew those domain names were confusingly similar to McDonald’s mark. (8/12/19
13 Email; Fuelleman Decl. ¶ 21, Ex. 16 (registering “mcd.ceo”); 2d Fuelleman Decl. ¶ 6, Ex.
14 4 (registering “globalmcdonalds.com”)); *see* 15 U.S.C. § 1125(d)(1)(B)(i)(VIII). And as
15 discussed above, the McD mark is distinctive. *See supra* § III.A; 15 U.S.C. § 1125
16 (d)(1)(B)(i)(IX). All of these factors weigh towards a finding of bad faith.

17 Most significant, however, is Mr. Camarata’s demonstrated use of the Disputed
18 Domain Names to capture misdirected emails and then forward those emails to
19 McDonald’s with a request for payment. There is no evidence that Mr. Camarata uses
20 the Disputed Domain Names for a bona fide offering of goods and services or another

21 //

22 //

1 bona fide noncommercial purpose.⁴ *See* 15 U.S.C. § 1125(d)(1)(B)(i)(III)-(IV). Instead,
 2 the numerous emails in evidence shows that Mr. Camarata intended to divert emails away
 3 from McDonald’s legitimate domain names so that he could use them for his own
 4 commercial gain. (*See, e.g.*, Fuelleman Decl. ¶ 8, Ex. 7 at 5 (threatening to send
 5 “invoices for bills at \$500.00 per hour”); *see* 15 U.S.C. § 1125(d)(1)(B)(i)(V). Indeed,
 6 Mr. Camarata’s operation depends on “creating a likelihood of confusion as to the source
 7 . . . [or] affiliation . . . of the site.” *See* 15 U.S.C. § 1125(d)(1)(B)(i)(V). Furthermore,
 8 Mr. Camarata then offers to sell McDonald’s the information obtained through that
 9 confusion, oftentimes redacting the sender’s identifying information so that McDonald’s
 10 cannot reach out to the sender itself. (*See generally, e.g.*, Fuelleman Decl. ¶ 8, Ex. 7.)
 11 When he does not receive payment, he then makes veiled threats to sue or go to the
 12 media. (*See, e.g., id.* ¶ 8, Ex. 7 at 5.) The fact that Mr. Camarata has repeated this
 13 process for several domain names—again, some of which he acquired after McDonald’s
 14 began this challenge—speaks to his pattern of bad faith conduct. (*Id.* ¶ 21, Ex. 16; 2d
 15 Fuelleman Decl. ¶ 6, Ex. 4; *see generally* Fuelleman Decl. ¶¶ 8-10, Exs. 7-9.) The court
 16 finds that against this undisputed record, there is no genuine issue of material fact that
 17 Mr. Camarata acted with bad faith intent to profit from the McD mark.⁵

18 ⁴ The court agrees with the two panels that no evidence supports Mr. Camarata’s attempt
 19 to qualify the Disputed Domain Names as “gripe” websites. (*See* UDRP Decision at 5-6; CDRP
 20 Decision at 5-7.) The undisputed evidence reveals that none of the Disputed Domain Names
 21 originally featured concerns about McDonald’s, and Mr. Camarata did not set up a “gripe”
 22 website until after McDonald’s had filed a complaint. (*See* Fuelleman Decl. ¶¶ 21-22, Exs.
 16-17.) There is no evidence suggesting any other bona fide noncommercial use.

ORDER - 14

23 ⁵ The ACPA provides a “safe harbor” defense for registrants who reasonably believed
 24 that their use of the domain name was fair or otherwise lawful. 15 U.S.C. § 1125(d)(1)(B)(ii).

1 In sum, the court finds no genuine issue of material fact as to McDonald's
 2 ownership of the distinctive and valid McD mark, the confusingly similar nature of the
 3 Disputed Domain Names to the McD mark, and Mr. Camarata's bad faith intent to profit
 4 from the McD mark. Accordingly, the court grants summary judgment to McDonald's
 5 on its counterclaim asserting that Mr. Camarata violated the ACPA. Because Mr.
 6 Camarata's registration and use of the Disputed Domain Names are unlawful under the
 7 ACPA, he cannot prevail on his declaratory judgment claim. (*See* Compl. ¶ 16); *see* 15
 8 U.S.C. § 1114(2)(D)(v). Thus, the court also grants McDonald's summary judgment on
 9 Mr. Camarata's claim.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the court GRANTS McDonald's motion for summary
 12 judgment (Dkt. # 41).

13 Dated this 23rd day of March, 2021.

14
 15 
 16 JAMES L. ROBART
 17 United States District Judge

20 Mr. Camarata has not invoked this defense (*see* Dkt.), nor is there any evidence to support such a
 21 defense, *see Lahoti*, 586 F.3d at 1203 ("[A] defendant who acts even partially in bad faith . . . is
 22 not, as a matter of law, entitled to benefit from the [ACPA's] safe harbor provision."). Mr.
 Camarata "has made his cybersquatter bed and now cannot persuasively challenge the . . .
 conclusion that he must lie in it." *Id.*